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[Despatch Abstract.]

Separation of the Judiciary from the Executive - Memorandum of Instructions regarding allocation of powers - Papers

PUBLIC (SEPARATION) DEPARTMENT.

MEMORANDUM OF INSTRUCTIONS.

The following instructions are issued for the guidance of Magistrates, Police Officers and the public.

I. INTRODUCTORY:

1. To have a correct appreciation of the nature and scope of the scheme that is being implemented, it is necessary to bear in mind some of its cardinal features.

2. The scheme has been designed within the framework of the Criminal Procedure Code. No amendment to the Code or other Statute is necessary to implement it.

3. Under the Criminal Procedure Code and other relevant statues, the functions of a Magistrate fall into three broad categories, viz.,

(a) Functions of an administrative which are 'Police' in their nature as for instance, in the handling of unlawful assemblies;

(b) Functions of an administrative character, as for instance, the issue of licences for fire arms etc., and

(c) Functions which are essentially judicial, as for instance, in the trial of Criminal cases.

Hitherto all these functions have been concentrated in the Collector of the District and a number of Magistrates subordinate to and controlled by him. The essential feature of the new scheme is that purely judicial functions coming under category (c) above are transferred from the Collector and Magistrates subordinate to him, to a new set of officers who will no longer be under the control of the Collector. Functions under (a) (b) above will continue to be discharged by the Collector and the Revenue Officers subordinate to him. To indicate this difference, officers in the former category will be called in this Memorandum "Judicial Magistrates" and those in the latter category will be called "Executive Magistrates."

4. These will be executive officers of the Revenue Department, viz., the Collector, the Revenue Divisional Officer, the Tahsildar and the Deputy Tahsildar on whom the responsibility for the maintenance of Law and Order will continue to rest. To enable them to discharge this responsibility, these officers will continue to be Magistrates. The Collector, by virute of office, will retain some of the powers of a District Magistrate and will be called the "Additional District Magistrate". To distinguish him from his personal Assistant, he will be called "Additional District Magistrate (Indppendent)". He will

continue to be the Head of the Police. Similarly, the Revenue Divisional Officers will be ex-officio First Class Magistrates and the Tahsildars and the Deputy Tahsildars will be ex-officio Second Class Magistrates. The extent of their magisterial powers will be as indicated in the Schedule of allocation of powers. They will exercise these powers within their respective revenue jurisdictions.

5. As officers of the Revenue Department, those Magistrates would be under the Government through the Board of Revenue.

6. The powers of the Police, such as those under Chapter XIII are not touched.

III. JUDICIAL MAGISTRETES:

This category of Magistrates will consist of

(i) The District Magistrate,

(ii) The Sub Divisional Magistrates,

(iii) The Additional First Class Magistrates.

(iv) The Second Class Magistrates (Sub Magistratea).

All these Magistrates will be stationary and will have fixed hours of sitting as in the case of Civil Courts.

8. DISTRICT MAGISTRATE: He will be the principal officer of the District and as such will have general administrative Superintendence and control over the other Judicial Magistrates in the District. He will inspect once every year (or oftenera if need be) all the courts of the S.D.Ms. and the A.F.C.Ms. in his district and such of the Courts of Sub Magistrates as he considers necessary. It will be always his primary responsibility to see to their efficient condition in general and to the quick despatch of work in the Subordinate Courts. To this end, he should keep a watch ofer the files of all the Subordinate Magistrates and take appropriate steps to deal with congestion of work in any Court.

9. In addition to his general supervisory functions and to the special powers under the Code of hearing revision petitions, transfer petitions and the like, the DM. will also be assigned a specified area, the cases arising from which he normally disposes himself. He should also hear appeals from Second Class cases arising within that area. It will be open to the D.M. to transfer to and from his file, particular cases or class of cases and appeals, but he will himself be expected to do cases of special difficulty and importance.

10. Administratively and judicially, the District Magistrate will be subordinate to the High Court. The powers of appointment, transfer and of investitute of magisterial powers will be with the Government. The Court of the District Magistrate will be inspected annually by

the District and Sessions Judge and the inspection report, in such form as may be prescribed by the High Court, should be submitted by the latter to the High Court. The District and Sessions Judge may, if he thinks fit, also inspect the Court of any Judicial Magistrate in his District.

11. SUB DIVISIONAL MAGISTRATES: They will hear and dispose of all First Class cases and appeals from Second and Third Class cases (when so empowered) arising within their respective areas and also such cases as may be transferred to them by the D.M. The S.D.M. will inspect at least once a year the Courts of all the Second and Third Class Magistrates in his jurisdiction including Bench Courts.

12. ADDITIONAL FIRST CLASS MAGISTRATES: These Magistrates are generally intended to deal with cases arising within the local limits of large areas like Mathurai, Tiruchirapalli, etc., In some cases, they have been given original jurisdiction over a larger area. Broadly speaking, they are, in other respects, indened to help the D.M. in the disposal of cases arising out of the area within the direct jurisdiction of the D.M. Where the D.M. has his headquarters at a place other than that of A.F.C.M., thecourt of the A.F.C.M. will be a Court of Institution. (Such cases are very few and have been proposed under special circumstances). He will be, in that event, invested with the necessary additional powers under the Code. Powers under the Code or any other Statute, if any, which are exclusively for the S.D.M. and which cannot be given to the A.F.C.M. will be exercised by the District Magistrate concerned.

13. Also, in the future set up, it may be occasionally necessary to appoint temporary F.C.Ms. to try cases of special importance or complexity or to clear off accumulated arrears; a non-gazetted F.C.M. would often meet such a need with the added advantage of being a cheaper agency.

14. SECOND CLASS MAGISTRATES: These Magistrates will entertain complaints and dispose of cases of Second and Third Class nature arising within their respective jurisdictions.

IV. ALLOCATION OF POWERS BETWEEN JUDICIAL AND EXECUTIVE MAGISTRATES

15. Allocation of powers between the two categories of Magistrates proceeds upon the principle enunciated in the 'Introductory' paragraph above, namely, that matters which are judicial in their nature (i.e. which involve the recording and sifting of evidence) are strictly within the purview of the Judicial Magistrates, while matters which are purely administrative of executive in their character should be dealt with by the Executive Magistrates, (the exception in the latter case being in the case of special emergency. (See below)

The Schedule sets out the details of this allocation and the following instructions are supplementary:--

16. CHAPTERS IX AND XI OF THE CR. P.C.: These contain provisions that enable urgent action to be taken to preserve law and Order and thus primarily and normally these functions devolve on the Executive Magistrates. But occasions may arise where for some reason or other, the Executive Magistrate is not available on the spot. At such

times, the officer for the time being in charge of a Police Station, or any higher officer may seek the assistanee of a Judicial Magistrate for the issue of an order under these Chhapters and it will be the duty of the Judicial Magistrate to render that assistance by issuing such orders as the Magistrate may consider necessary; in other words, should act as if he were the Executive Magistrate pending arrival of the latter. The moment the Executive Magistrate comes on the scene and is able to take charge of the situation, the Judicial Magistrate will efface himself. But, before withdrawing from the picture, the Judicial Magistrate will, if so requested by the Executive Magistrate, modify or cancel whatever directions he may have issued, so that the Executive Magistrate will be able to act unhampered by orders not of his own making.

CHAPTER VIII OF THE CR. P.C.: This consists of sections 106, 107, 108, 109 and 110 which are dealt with seriatim below.

(1) Section 106 can be invoked only after a magistrate has convicted an accused person and therefore necessarily falls outside the purview of the Executive Magistrate and remains exclusively within the purview of the Judicial Magistrate.

(2) With regard to Section 107, it has been decided for special reasons to vest jurisdiction exclusively in the Executive Magistrate. The entire proceedings under the section in all its stages, including trial, will be by the Executive Magistrate and the Judicial Magistrate will not have anything to do with it.

(3) In regard to the other sections, 108, 109 and 110 the rule is that only the Judicial Magistrate will have the jurisdiction to conduct proceedings. The "Information" to which reference is made in these Sections originate almost always from the Police, and they can lay the "information" directly before the Judicial Magistrate. It is only very rarely that a private person seeks to initiate proceedings under these sections and he can be referred to the Judicial Magistrate if through ignorance or mistake he approaches the Executive Magistrate. No question of emergency in respect of any of these sections can possibly arise and the question of taking iterim Bonds under Section 117 will hardly arise. Section 108 deals with the spreading of seditious etc., matter; Section 109 with persons who have no ostensible means of livelihood or who cannot give a satisfactory account of themselves and Section 110 with habitual offenders. These sections are shown under the heading "concurrent jurisdiction" to provide for all contingencies.

18. CHAPTERS X AND XII: In cases falling under these chapters, the Judicial Magistrate will take no action in the first instance. The Public and the Police will go to the concerned Executive Magistrate and if he considers no action is necessary or if his directions are complied with without contest, the proceedings will automatically end. If the party directed to show cause, decides to do so and on enquiry becomes necessary, the case will be transferred by the D.M. to the appropriate S.D.M.

19. CHAPTER XIV: (1) In cognisable cases, the Police will normally deal with the Judicial Magistrate. The F.I.R. will be sent to him as also the list of the properites seized or recovered if there be such. The final report whether it is a 'referred case' or a 'charge-sheet' will also be sent to him for orders or trial as the case may be. The order to be passed in a 'referred case' will always be an administrative order.

The executive Magistrate may also direct the Police to make further enquiry whenever he considers it necessary in a case referred to him; if such enquiry results in a charge-sheet, the Judicial Magistrate should try the case as any other case.

(2) NON-COGNIZABLE CASES: The Judicial and the Executive Magistrates will have concurrent powers to direct the Police to investigate. The Police will send a copy of the final report to the Magistrate who directed the investigation, whether he be Executive or Judicial. All charge-sheets will be dealt with by the Judicial Magistrates.

(3) OTHER PROVISIONS OF THE CODE: As indicated in the Schedule, the report under Section 62 of the Code should be sent to both the categories of Magistrates. So also, the powers under Section 100 relating to search for wrongly confined persons may be exercised by both the categories of Magistrates. Powers under Section 164 and the power to hold identification Parades are exclusively for the Judicial Magistrates. The power to tender pardon under section 337 should be exercised by the Executive Magistrates except in cases referred to in the proviso to sub-section (1) of that Section, in which case the Judicial Magistrate may exercise the powers.

20. The District Magistrate (Judicial) and the Collector-cum-Additional District Magistrate will act independently of each other in their respective spheres of work. Neither will intereferé with the discharge of work by the other. The District Magistrate (Judicial) would have power under section 526 (2) and (3) Cr.P.C. to withdraw cases from any Executive Magistrate and transfer them to a Judicial Magistrate but he will not exercise such powers in respect of matters exclusively within the purview of the Executive Magistrate, e.g., cases under Section 107 Cr.P.C.

It will be in order for the Collector cum A.D.M. to address comments to the Dt. and Sessions Judge on crime and the Magistracy in general, if he thinks fit.

21. V. MISCELLANEOUS:

(1) CALENDARS: Calendars in Judgements and Orders should be sent by Second Class Magistrates to the D.M through the S.D.M. The S.D.M. and the A.F.C.M. will submit their calendars through the D.M. to the Sessions Judge. The D.Ms. will send their calendars to the Sessions Judge. The Judicial Magistrates will send to the Collector copies of judgments which they consider should be sent or where such copies are asked for.

(2) SUB-JAILS: The Sub Magistrate will be the ex-officio Superintendent of the local sub-jail and as such discharge the functions in this behalf though they may be of an executive or an administrative character.

(3) SUB TREASURIES: When the Tahsildars go out of their head-quarters on camps or otherwise, the Sub Magistrate when requested to do so will be in charge of the keys of the Sub Treasury during the absence. The existing orders and conventions as to the procedure in this behalf, if any, will continue.

22. VI. SPECIAL INSTRUCTIONS IN REGARD TO PLACES WHERE THE "SIMULTANEOUS METHOD" WILL BE IN FORCE:

This system has been applied to certain District Munsifs & Courts in the Presidency where the civil work is light. Under this arrangement the same officer sitting in the same court would be a Civil Judicial Officer and a Criminal Judicial Officer at the same time, i.e., "Sumultaneously" as in the case of District and Sessions Judges. The nature and extent of the combination of functions will be as indicated immediately below:--

(a) The District Munsifs at the stations specified below will also be Sub Divisional Magistrates for the area under their jurisdiction. Where there are 2 Dt. Munsifs at the same station (7) to (10) below the Principal Dt. Munsif will have the powers of an S.D.M. and the Additional Dt. Munsif will be a First class Magistrate.

(1) Anantapur (2) Dharmavaram and (3) Penukonda	) in Anantapur) District.)
(4) Bellary (5) Hospet and (6) Adoni	) in Bellary) District.)
(7) Cuddappah (Principal) (8) Cuddappah (Additional) (9) Prodatur (Principal) (10) Prodatur (Additional) and (11) Nandalur	)))in Cuddappah) District.)
(12) Kurnool (13) Markhapur and (14) Banganapalli	) in Kurnool) District.)
(15) Amalapuram and (16) Razole	) in East Godava) District.
(17) Sathur and (18) Srivilliputhur	) in Ramnad) District.
(19) Ootacamund	Nilgiris District.

These officers will have all the powers of a S.D.M. and the courts will be courts of institution.

(b) The areas within the civil jurisdiction of the District Munsifs at

(1) Gooty in Anantapur District and

(2) Nandyal in Kurnool District,

will be directly under the District Magistrates on the

~~on the~~ magisterial side. These District Munsifs will be invested with I Class powers to help the District Magistrates concerned in the disposal of cases when necessary. Their courts will not be courts of institution and they will try only such cases as are transferred to them.

(c) The District munsifs at the stations mentioned below will be invested with I Class Powers generally in the District:--

(1) Krishnagiri in Salem District.

(2) Udumalpet in Coimbatore District.

(3) Tiruvadi and in Tanjore
(4) Sirkali District.

(5) Srivaikuntam in Tirunelveli District.

and (6) Palni in Mathurai District.

The intention is that as the civil work of these officers does not occupy all their time, their spare time can be utilised in the disposal of criminal cases whenever there is any accumalation with the District Magistrate or with the S.D.M. concerned. Normally, cases so transferred should relate to places inside the civil jurisdiction of the particular District Munsif.

23. The District Munsifs should pay very particular attention to the arrangement of work in their courts. Preference should invariably be given to magisterial work and criminal cases should, save for special and exceptional reasons, be heard on the dates on which they are posted. The Officers should pay their personal attention to the posting of civil cases.

24. VII. HONORARY MAGISTRATES AND BENCHES:

Special instructions will issue in due course in respect of these.

Fort St. George,
3rd August, 1949.

Sd. S. Balakrishnan,
Assistant Secretary to Government.

SCHEDULE .....

SCHEDULE

(Vide paragraph 1

ALLOCATION OF POWERS AND FUNCTIONS

Part I - Criminal Procedure Code.

Judicial Magistrate SECTION	Executive Magistrate SECTION	Concurrent jurisdiction SECTION.	Remarks.
		(1) and (2)	The intention is that all Executive Magistrates should be subordinate to the Collector CUM Additional District Magistrate while all Judicial Magistrates and Bench Magistrates should be subordinate to the Judicial District Magistrate.
		7	The power to make orders under section 144 and the power to hold inquests under section 174 will be exercised by Executive Magistrates while the other powers referred to in the Fourth Schedule as powers which may be conferred by the District Magistrate on Magistrates of the First, Second and Third Class and on Subdivisional Magistrates will be exercisable by Judicial Magistrates. The intention is that the capacity to invest Magistrates with powers to make orders under section 144 and to hold inquests under section 174 should be conferred on Executive Magistrates by the Collector (Additional District Magistrate) while the other powers referred to in the Fourt Schedule should be conferred on Magistrates by the Judicial District Magistrates.

Sl. No.	Judicial Magistrate SECTION	Executive Magistrate SECTION	Concurrent jurisdiction SECTION	Remarks.
22 9	..	..	45(1)	...
10	..	45(3)	...	A rule will be made in exercise of the powers of Government under this section investing Executive First-class Magistrates with powers to make appointments under the section.
	..	..	60	...
	..	..	61	The Executive Magistrate will exercise the powers conferred by sections 167 and 61, only where he has directed the Police to make an investigation, that is, in a non-cognizable case. In all other cases, the accused will be sent up to the Judicial Magistrate in accordance with the scheme in paragraph 19 of the Memorandum.
	..	..	62	Vide paragraph 19; reports should be sent by Station House Officers to both District Magistrates, Executive and Judicial.
	..	..	63, 64 and 65.	....
	Chapters VI and VII.			The intention is that all powers and functions conferred on Magistrates by these two chapters should be capable of being exercised by both classes of Magistrates.
	..	..	..	...
	107	..	..	...
	..	108 to 126-A.		Exercise of jurisdiction under these sections will be as indicated in paragraph 17 (3) of the Memorandum.
	..	Chapter IX (Sections 127 to 132).		Judicial Magistrates will exercise powers only in rare cases-- Vide paragraph 16 of the Memorandum.

Sl. No.	Judicial Magistrate	Executive Magistrate	Concurrent jurisdiction	Remarks.
	SECTION	SECTION	SECTION	
20			Chapter X (Sections 133 to 143)	Exercise of jurisdiction under these sections will be as indicated in paragraph 18 of the Memorandum.
21			Chapter XI (Section 144).	Judicial Magistrates will exercise powers only where Executive Magistrates are not available, in the circumstances and subject to the restrictions indicated in paragraph 16 of the Memorandum.
22			Chapter XII (Sections 145 to 148).	Exercise of jurisdiction under these sections will be as indicated in paragraph 18 of the Memorandum.
23			153 (2)	Information may be given to both classes of Magistrates.
24			Chapter XIV (except sections 164 and 174)	The powers will be exercised by the Executive and the Judicial Magistrates in the manner indicated in paragraph 19 of the Mmmorandum.
25				
26		174		
27	186 and 187			
28	190 (1) (a) (b).			
29			190 (1) (c)	
30	190 (2)			
31			192	Where a matter in respect of which an inquiry is being held falls within the jurisdiction of the Executive Magistrate, the transfer of the case will be made by the Collector CUM Additional District Magistrate. In other cases, transfers will be ordered by the Judicial District Magistrate.

Sl. No.	Judicial Magistrate. SECTION	Executive Magistrate. SECTION	Concurrent jurisdiction SECTION.	Remark
32	..	196-A(2) ..	.. ..	...
33	..	196-B	..	...
34	Chapters XVI to XXII (Ss. 200 to 265).	..	..	...
35	..	326	..	...
		337 (1), 1st paragraph.	..	...
		..	337(1),2nd paragraph (proviso). ..	Reference to the Magistrate in the province should be construed as reference to the Executive District Magistrate. Reference to the Magistrate making the enquiry or holding the trial, etc.,should be construed as a reference to the Judicial Magistrate.
38	..	..	338	The Court of Session will have discretion to order EITHER District Magistrate to tender a pardon under this section.
39	... 346(1)	.. ..	...	The Judicial District Magistrate will give the direction referred to in the last portion of this section.
40	..	..	387	...
41	406-First proviso.	...	..	.....
42	406-A(c)	....	..	...
43	~~435xtoxi38~~ 407(1) and(2)	...	..	...
44	435 to 438	..	..	...
45	488	..	..	...
46	..	492 (2)	..	...

47 .....

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Sl. No.	Judicial Magistrate. SECTION	Executive Magistrate. SECTION	Concurrent Jurisdiction SECTION	Remarks.
47.	..	..	503 and 506.	The commission under section 503 may be issued to EITHER District Magistrate. The application under section 506 will be made by an Executive Magistrate to the Collector CUM Additional District Magistrate and by the Judicial Magistrate to the Judicial District Magistrate.
48	515	..	..	
49	..	..	528(2),(3) and (4)	The remarks on section 192 above will apply here also.
50	..	..	549(2) and 552.	
51	561(1)	..	..	
52	...	..	561 (2)	

PART II - CENTRAL ACTS.

Serial number and name of Act.	Judicial Magistrate SECTION	Executive Magistrate SECTION	Concurrent jurisdiction SECTION
1. Air Force Act (XIV of 1932)	81 and 90	..	..
2. Arms Act (XI of 1878)	.. ..	18(a), 25, 28 and 29.	..
3. Auxiliary Force Act (XLIX of 1920)	..	22	..
4. Cantonments Act II of 1924).	238 and 239 (4).	263 (2).	..
5. Cantonments (House (Accomodation) Act (VI of 1923)	..	12	..
6. Cattle Trespass Act I of 1871).	20 to 22	4, 5 and 14	..
7. Cinematograph Act (II of 1918)	..	4 and 7(5)	..
8. Criminal Tribe (VI of 1924)		4 to 9 and 15 (2)	..

p.t.o.

Serial Number and name of Act.	Judicial Magistrate SECTION	Executive Magistrate SECTION	Concurrent jurisdiction. SECTION
9. Dangerous Drugs Act (II of 1930).	..	..	22
10. Dramatic Performances Act (XIX of 1876).	..	3	8
11. Electricity Act (IX of 1910).	..	12, 20 and 30.	..
12. Emigration Act (VII of 1922).	..	28	..
13. European Deserters Act (XI of 1856).	..	7	5 and 6
14. European Vagrancy Act (IX of 1874).	..	5 to 9	..
15. Explosives Act (IV of 1884)	..	9	..
16. Extradition Act (XV of 1903)	3,7 and 8-A.	..	4 and 10
~~17. Female Infanticide Prevention Act (VIII of 1870)~~	..	..	~~6~~
17. Factories Act (XXV of 1934)	..	10(4)	..
18. Female Infanticide Prevention Act (VIII of 1870)	..	..	6
19. Foreigners Act (III of 1864)	..	3-A, 6 and 20.	14,15, 16 and 18.
20. Foreigners Act (II of 1940)	..	6	..
21. Forest Act (XVI of 1927).	67	..	..
22. Identification of Prisoners' Act (XXXIII of 1920).	..	..	7.
23. Lepers Act (III of 1898).	8	..	..
24. Light-House Act (XVII of 1927).	15	..	..
25. Lunacy Act (IV of 1912).	5 to 11-B, 13 to 16,23 and 85.	..	..
26. Metal Tokens Act (I of 1889).	..	The power to accord sanction under section 5(2).	

27..... p.t.o.

Serial Number and name of Act.	Judicial Magistrate SECTION.	Executive Magistrate SECTION.	Concurrent jurisdiction SECTION.
27. Mines Act (IV of 1923)	..	4(3) and 4A	..
28. Motor Vehicles Act (IV of 1939)	..	75(4)	..
29. Obstruction in Fairways Act (XVI of 1881)	3, Second paragraph	..	..
30. Official Secrets Act (XIX of 1923).	18(1)	..	11
31. Opium Act (I of 1878)	..	..	19
32. Passport Act (XXXIV of 1920)	4(2)	..	..
33. Petroleum Act (XXX of 1934).	..	..	27
34. Poisons Act (XII of 1919)	..	..	7
35. Police Act (V of 1861)	..	30(2) to(4) and 30-A.	..
36. Police (Incitement to Disaffection) Act (XXII of 1922).	..	5	..
37. Press and Registration of Books Act(XXV of 1867).	..	4,5,6,8 and 8-A.	..
38. Press(Emergency Powers) Act (XXIII of 1931).	..	3,5,7,9,13, 14, 16(2) to and 15. (4) and 17.	
39. Prevention of Cruelty to Animals Act (XI of 1890).	..	6-B(4), 8,10 and 14.	
40. Prevention of Seditious Meetings Act (X of 1911).	..	4 and 5	..
41. Prisoners Act (III of 1900).	..	..	37-proviso and 38,39 and 43(a).
42. Prisons Act (IX of 1894).	52	11(2)	..
43. Railways Act (IX of 1890).	131(2) and 132(2).	..	..
44. Reformatory Schools Act (VIII of 1897).	8 to 11	..	..
45. Sarais Act (XXII of 1867).	14	3 to 12 and 15.	..
46. Sea Customs Act (VIII of 1878).	174 to 176	..	170,172 and 177

Serial number and name of Act.	Judicial Magistrate SECTION	Executive Magistrate SECTION	Concurrent jurisdiction. SECTION
17. Tea Districts Emigrant Labour Act(XXII of 1932)	..	17,22,24, 27 to 30 and 36(3).	...
18. Telegraph Act (XIII of 1885).	.. ..	16,17 and 33.	..
19. Wireless Telegraphy Act (XVII of 1933).	..	..	7
50. Works of Defence Act (VII of 1903).	..	37	..

PART III - Control Acts applying exclusively to the Province of Madras.

1. Malabar War Knives Act (XXIV of 1856)	..	3	..
2. District Police Act (XXIV of 1859).	..	15 and 16.	..

PART IV - Madras Acts and Regulations.

1. Abkari Act (I of 1856).	50	..	30,39 and 54.
2. Borstal Schools Act (V of 1926).	6,7 and 11.	19-B and 19-F.	..
3. Cattle-Disease Act (II of 1866).	14 and 16.	10,12 and 15	..
4. Children Act (IV of 1920).	4,5 and 42(1)(a)	..	..
5. Coffee Stealing Prevention Act (VIII of 1878).	9,13 and 14.	..	6.
6. Gaming Act (III of 1930).	..	..	5(1)
7. Hereditary Village Offices Act (III of 1895).	..	26	..
8. Maintenaace of Public Order Act(I of 1947).	..	2(6),5(3) and 5(4).	..
9. Motor Vehicles Taxation Act (III of 1931).	..	6(2)	..
10. Places of Public Resort Act (III of 1888).	13	10,11 and 12	..

Serial Number and name of Act.	Judicial Magistrate SECTION.	Executive Magistrate SECTION.	Concurrent jurisdiction SECTION.
27. Mines Act (IV of 1923)	..	4(3) and 41	..
28. Motor Vehicles Act (IV of 1939)	..	75(4)	..
29. Obstruction in Railways Act (XVI of 1881)	3, Second paragraph	..	xx
30. Official Secrets Act (XIX of 1923).	18(1)	..	11
31. Opium Act (I of 1878)	..	..	19
32. Passport Act (XXXIV of 1920)	4(2)	..	..
33. Petroleum Act (XXX of 1934).	..	..	27
34. Poisons Act (XII of 1919)	..	..	7
35. Police Act (V of 1861)	..	30(2) to(4) and 30-A.	..
36. Police (Incitement to Disaffection) Act (XXII of 1922).	..	5	..
37. Press and Registration of Books Act(XXV of 1867).	..	4,5,6,8 and 8-A.	..
38. Press(Emergency Powers) Act (XXIII of 1931).	..	3,5,7,9,13 and 15.	14, 16(2) to (4) and 17.
39. Prevention of Cruelty to Animals Act (XI of 1890).	..	6-B(4).	8,10 and 14.
40. Prevention of Seditious Meetings Act (X of 1911).	..	4 and 5	..
41. Prisoners Act (III of 1900).	..	..	37-proviso and 38,39 and 43(a).
42. Prisons Act (IX of 1894).	52	11(2)	..
43. Railways Act (IX of 1890).	131(2) and 132(2).	..	..
44. Reformatory Schools Act (VII of 1897).	8 to 11	..	..
45. Sarais Act (XXII of 1867).	14	3 to 12 and 15.	..
46. Sea Customs Act (VIII of 1878).	174 to 176	..	170,172 and 177

Serial number and name of Act.	Judicial Magistrate SECTION	Executive Magistrate SECTION	Concurrent jurisdiction. SECTION
47. Tea Districts Emigrant Labour Act(XXII of 1932)	..	17,22,24, 27 to 30 and 36(3).	...
48. Telegraph Act (XIII of 1885).	..	16,17 and 33.	..
49. Wireless Telegraphy Act (XVII of 1933).	..	..	7
50. Works of Defence Act (VII of 1903).	..	37	..

PART III - Control Acts applying exclusively to the Province of Madras.

1. Malabar War Knives Act (XXIV of 1850)	..	3	..
2. District Police Act (XXIV of 1859).	..	15 and 16.	..

PART IV - Madras Acts and Regulations.

1. Abkari Act (I of 1856).	50	..	30,39 and 54.
2. Borstal Schools Act (V of 1926).	6,7 and 11.	19-B and 19-F.	..
3. Cattle-Disease Act (II of 1886).	14 and 16.	10,12 and 15	..
4. Children Act (IV of 1920).	4,5 and 42(1)(a)	..	..
5. Coffee Stealing Prevention Act (VIII of 1878).	9,13 and 14.	..	6.
6. Gaming Act (III of 1930).	..	..	5(1)
7. Hereditary Village Offices Act (III of 1895).	..	26	..
8. Maintenance of Public Order Act(I of 1947).	..	2(6),5(3) and 5(4).	..
9. Motor Vehicles Taxation Act (III of 1931).	..	6(2)	..
10. Places of Public Resort Act (III of 1888).	13	10,11 and 12	..

Serial number and name of Act.	Judicial Magistrate SECTION	Executive Magistrate SECTION	Concurrent jurisdiction SECTION
PART III - Central Acts applying exclusively to the Province of Madras. (Contd.)			
11. Prevention of Adulteration Act (III of 1918).	..	..	12
12. Probation of Offenders Act (III of 1937).	5	9(3)	9(4)
13. Prohibition Act (X of 1937)	52	..	28 and 50
14. Suppression of Immoral Traffic Act.	6 (ii)	..	6(1)
15. Suttee Regulation (I of 1830).	3-First	3-Second and third.	..
16. Village Courts Act (I of 1898).	77(8)	..	..
17. Town Nuisance Act (III of 1889).	..	10	Executive D.M. will have all the powers.

IMPORTANT NOTES.

1. Under the heading "Judicial Magistrate," are not, generally speaking, listed those sections which in clear terms speak of a "Convicting Magistrate," "Trying Magistrate" or ~~speak-of~~ which apply to a Court of Magistrate holding a trial, etc., as the language itself is sufficiently explicit in such cases.

2. This schedule cannot be said to be exhaustive. In respect of any matter left out of it, the allocation of functions will be made on the following principles:--

(i) Matters which involve the appreciation or sifting of evidence and the formulation of a decision which exposes any individual to any punishment or penalty or to detention or would have the effect of sending him up for trial before any Court will properly be in the province of a Judicial Magistrate.

(ii) Matters which are clearly administrative or executive in their nature, such as, the grant of a licence, the suspension or cancellation of a licence, sanctioning a prosecution, withoutdrawing from a prosecution, and their like should be in the province of the Executive Magistrate.

(iii) Where any enactment requires that "information" shall be given to a "a Magistrate", the public would be deemed to have discharged their duty if they pass on the information to either class of Magistrate.

(iv) The power to issue warrants and the various other processes are concurrent.

3. Additions to, or alternations in, this schedule will be effected, wherever it is necessary, by Government in consultation with the High Court.

4. Should the question arise whether a matter, not included in this schedule, falls within the province, of the one class of Magistrate or of the other, and the matter is one of urgency, the executive District Magistrate will decide the question, pending receipt of final orders from Government actingiin consultation with the High Court.

Sd. x.x S. Balakrishnan,
Assistant Secretary to Government.

STRICTLY CONFIDENTIAL.

REVENUE DEPARTMENT

ABSTRACT.

Separation of Judiciary from the Executive - Draft memorandum of Instructions regarding allocation of powers - Board's remarks - Submitted.

-x-x-x

that the Collector - District Magistrate may be designated as "Additional District Magistrate (Independent) in contradistinction to the other plain "Additional District Magistrates" who may be colloquially referred to as "Dependednt". This may be done by executive instructions.

(2) The last sub paragraph IV of the draft instructions gives the District Magistrate (Judicial) with powers to withdraw cases from any "Executive Magistrate" and transfer them to a Judicial Magistrate, except in respect of matters exclusively within the purview of the Executive Magistrate e.g. cases under Section 107 Cr. P.C. This means that the Judicial District Magistrate has powers to withdraw cases even from a "Collector-District Magistrate" or "Additional District Magistrate" as he is proposed to be called. The Board feels that this provisions will interfere with the prestige and the powers of the "Collector-District Magistrate". Further, most of the listed post holders and Civilian officers, who are likely to be Collector-District Magistrates may resent, with some justification, interference by the Judicial District Magistrates, who may be of the Sub Judges cadre. The Board, therefore, submits that the provisions referred to above may be made to limit the power of transferring cases to those on the files of all except the Collector-District Magistrates.

Sd. x x x
for Secretary.

To

The Secretary to Government,
Public(Separation) Department.

R.O.C. No. 5598/49-B.1.

From

Sri K.N. [illegible], B.A., B.L.,
Registrar, High Court, Madras.

To

The Chief Secretary to Government
Public (Separation) Department,
Fort St. George, Madras.

Dated 7th September 1949.

Sir,

Sub: Separation of Judiciary from the Executive - Memorandum of instructions regarding allocation of powers - Draft preparation - Training to be given to new Magistrates, etc., - Proposals - opinion of the High Court - Forwarded.

Public (Separation) Department letters No. 104/49-1 and 2 dated 3-8-1949.

I am directed to say that the Honourable the Judges agree to the proposals of the Government set out in Part IV of the Memorandum of Instructions regarding the allocation of powers under Chapters IX to XII Crl.P.C. and Sections 62, 100, 164, 337 and 528 Crl.P.C. But their Lordships consider that it is not advisable to invest Sub Divisional Magistrates with powers of withdrawal of cases. In the opinion of their Lordships - there is no reason whatever for the powers under section 107 Crl. P.C. being handed over to the executive Magistrates completely. Both the categories of Magistrates should have concurrent jurisdiction as originally proposed by the Committee. The entire powers under Chapter XIV Crl.P.C. should be exercised by Judicial Magistrates only and the executive Magistrates should have no power either to direct investigation or order further enquiry. Nom non-cognisable case should be investigated by the police except under the orders of a judicial Magistrate who alone is competent to try the case.

2. With reference to item (ii) of part V of the Memorandum, the Honourable the Judges would suggest that a separate Jail official may be appointed to be in charge of the Sub Jail instead of the Stationary Sub Magistrate being the ex-officio superintendent of the sub jail.

3. Their Lordships consider that in Part VI of the Memorandum, there is no need for mentioning the names of courts in which the special arrangements as to the introduction of the simultaneous system are to be made. For the present the instructions may be in general terms, applicable to all District Munsifs who may be invested with First Class powers from time to time.

4. It has been said at page 3 of the Memorandum that administratively and judicially the District Magistrates will be under the control of the High Court and the powers

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of appointments, transfer and investiture of magisterial powers will be with the Government. But the High Court has been of the view that the Criminal and Civil Judiciary as a whole should be under the control of the High Court so that the independence of the judiciary may well be protected. The Honourable the Judges however consider that the power of appointment of District Magistrates may, for the time being, vest in the Government, such appointments being made only on the recommendation of the High Court as is done in respect of appointments and transfers of District Judges.

5. The Honourable the Judges have no objection to the proposal to extend the period of Magisterial training to 4 months and to reduce the period of training in execution and administration to one month, thereby enhancing the total period of training to 7 months instead of 6 months. Their Lordships agree to the proposal regarding immediate training of the existing personnel of the Judicial Department.

6. On the question of recruitment of District Magistrates, the Honourable the Judges suggest that atleast a small proportion may even now be taken from the practising members of the bar, as for example, practitioners who are, or had been, public prosecutors in the mofussil and Chief Assistant Crow Prosecutors in the city and that all appointments need not be confined to Subordinate Judges alone. It is also considered essential that the powers of recruitment of II and III Class Magistrates should be left with the High Court for the reason that these officers will have to be promoted as District Munsifs-cum-Sub Divisional Magistrates. As to the interim arrangements pending selection of candidates for appointment as Magistrates, the Honourable the Judges are of the view that the claims of the members of the High Court Service and the Judicial Ministerial Service should certainly be considered in filling up the vacancies of Magistrates' posts. (Vide High Court's letter Roc. No.3895/49-D3 dated 25-5-49 to the Secretary to Government, Home Department).

Sd. x x x x

(From the Board of Revenue, L.Dis.No.W.7626/48, dated 1.9.49).

(From the Registrar, High Court, R.O.C.No.5598/49-B1, dated 7-9-1949).

This file deals with the Memorandum of Instructions regarding the allocation of powers between the two categories of magistrates in the new set up. The Memorandum has been scrutinised by the Board of Revenue and the High Court. Both of them agree in general with the contents of the Memorandum and the few remarks they have to make are examined below:--

BY THE BOARD OF REVENUE:

The Board has two suggestions to make:

(i) It suggests that the Collector-Additional District Magistrate should be called "Additional District Magistrate (Independent)" to distinguish him from his Personal Assistant, who will also be an Additional District Magistrate and who, it is suggested, may be called a "(Dependent) Additional District Magistrate." There appears to be no objection to this verbal usage and this suggestion has since been adopted in the Memorandum.

(ii) The Board desires that the power of the Judicial District Magistrate to withdraw cases may be restricted to Executive Magistrates other than the Collector. In paragraph 20 of the Memorandum, Judicial District Magistrates have been specifically asked not to exercise such powers in respect of matters exclusively within the purview of the Executive Magistrates. This has been clarified further by the addition of another sentence.

2. BY THE HIGH COURT:

Their Lordships of the High Court raise 7 points.

(i) It is not advisable to invest Sub Divisional Magistrates (Judicial) with powers of withdrawal of cases.

This is what has been intended (See paragraph 20, third sentence) and to clarify matters another sentence has been added.

(ii) There is no reason whatever for the powers under Section 107 Cr.P.C. being handed over to the Executive Magistrates.

On this point, the opinion of Their Lordships sent previously is at variance with the opinion now given. Previously the High Court would seem to favour the allotment of such powers to the Executive Magistrates. The present view of the High Court is in fact the one advocated by the Export Committee. The Cabinet Committee reached its decision in this matter after a careful consideration of this view and also the extreme view that all the powers under Security Sections should be given to the Executive Magistrates. Being in the nature of a compromise ~~between~~

between the two opposing views, the decision of the Cabinet Committee appears to be more satisfactory, at any rate, for the present, until some experience is gained in the working of the Scheme. Hence, no lateration appears to be called for.

(iii) The Executive Magistrates should have no power to direct investigation or order furhther enquiry.

It is submitted that this view of the High Court is also in the nature of an extreme view. It is provided that all charge-sheets should be dealt with by the Judicial Magistrate and no sacrifice of principle appears to be involved in giving the power of ordering fuhther enquiry to Executive Magistrates, In fact, to deny such powers to them will be to sacrifice reason for logic. No change appears to be called for on this head also.

(iv) A separate jail official should be appointed to be in charge of the Sub Jail.

This aspect of the matter has been examined in full by the Committee and their remarks are categrorical. They say "it will be a saste of money to appoint a separate Sub Jail Superintendent; the office would then become a SINECURE. In these circumstances, we would retain the Sub Magistrate as a Superintendent of the Sub Jail. To those who object on principle, we would point out that we are not building on wholly new foundations and that it is convenient as far as possible to utilize the existing framework." It will therefore be most uneconomical to appoint a separate official for Sub Jail.

(v) The names of the courts to which the "Simultaneous Method" is to be extended need not be mentioned and the instructions may be in general terms.

The names are given on the basis of the statistical materials collected here and they appear to be necessary atleast with regard to sub-paragraphs (a) and(b) of paragraph 22 of the Memorandum, where the "Simultaneous Method" will be in force as a permanent measure. Out of deference for the views of the High Court, sub-paragraph(c) may be suitably amended by omitting the centres.

(vi) District Magistrates may be appointed by Government in consultation with the High Court as in the case of District Judges.

This is what we propose to do. Matters can be clarified when final decisions are taken on the scheme in accordance with the principles to be settled.

Their Lordships also consider that Second and Third Class Magistrates should be recruited by the High Court.

This is also a matter which may be considered in due course.

(vii) A small proportion of posts of District Magistrates should be filled by direct recruitment.

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This has been fully considered by the Cabinet Committee and the decision taken was considered one and hence, no change appears to be necessary.

The Memorandum formed part of the main file which was already circulated to the Departments of the Secretariat. However, this may be sent to Revenue and Home for perusal and remarks, if any.

Sd. x x-
28/9/49.

Rev/Home.

Publ.(Sepn) U.O.No.111/49-3.
dt. 28-9-49.

Revenue Department.

Notes from page 7 ante. Board's remarks at pp. 7-8 c.f and the Memorandum of Instructions at flag (L) may please be read. The Board has generally agreed with the contents of the Memorandum except in respect of two points mentioned ~~at~~ on pp.7-8 ~~and~~ c.f. Pub.(Sepn.) have answered these two points in para 1 of their note on p. 7 ante.

2. Pub.(Sepn.) have agreed to the Board's suggestion in para (1) on p. 7 c.f. and have also said that they have since adopted the suggestion in the Memorandum. But, it will be seen from para 4 of the Memorandum that no mention has been made of the "Addl. Dt. Magte. (Dependent)" so as to bring out the distinction between the Collector-Dt.Magtes.who will be now designated A.D.Ms. and their P.A. who are also "Addl. Dt. Magtes." It will perhaps be better if the designation of "Additional Dt. Mgte.(Dependent)" is also made mention of in the Memorandum.

Not quite necessary; the Board also mentions only "colloquial" -

3. As regards the other point raised by the Board also, Pub.(Sepn.) have stated that they have clarified the instructions in the Memorandum further by the addition of another sentence - please see in this connection Board's point in para (2) on pp. 7-8 c.f. and para 20 of the Memorandum referred to by Pub.(Sepn.). It would appear that the Board's point has not been brought out sufficiently precisely in para 20 of the Memorandum. They may be requested to do so now.

4. With these remarks, the file may be passed on to Home.

Sd. x x
30/9/49.

Home.

Rev.U.O.No.58222 B/49-1;
dated 30-9-49.

Home Department.

The file deals with the Memorandum of Instructions

regarding the allocation of powers between the two categories of magistrates in the new set up. The Board of Revenue and the High Court have scrutinised the memo and their remarks are at pp 7.8 and 9-10 ..f.

2.. The following remarks seem called for in this Dept.:-

1) EXERCISE OF POWERS UNDER SECTION 107 CR.P.C. BY EXECUTIVE MAGISTRATES:--

While offering their remarks on the recommendations of the Separation Committee, the Hon'ble the Judges held the following views as follows:-

> "The Hon'ble the Judges consider that, broadly speaking all emergency powers and provisions concerned with the preservation of peace should be administered by the Executive Magistrate while provisions requiring an adjudication on evidence or involving a determination of the rights or liberties of the citizen should be dealt with by the Judicial Magistrate. On this basis, their Lordships recommend that, with the exception of sections 109, 110 and of-course 106, all the powers under Chapters VIII, IX, X, XI and XII of the Code should be vested in the executive Magistrate, "cases under Sections 109 and 110 should be heard by the Judl. Magte."

Their Lordships are now of opinion that there is no reason whatever for the powers under section 107 Cr. P.C. being handed over to the Executive Magistrates completely and that both the categories of Magistrates should have concurrent jurisdiction as originally proposed by the Committee. The present view of the High Couet is at variance with its previous opinion. The Cabinet Committee has decided for special reasons, to vest jurisdiction under section 107 Cr.P.C. exclusively in the Executive Magistrate as the entire proceedings under the section in all its stages, including trial, will be by the Executive Magistrate and the Judicial Magistrate will not have anything to do with it. The Public (Separation) department have stated that the Cabinet Committee reached its decision in this matter after a careful consideration of this view and also the extreme view that all the powers under Security Sections should be given to the Executive Magistrates and that being in the nature of a compromise between the two apposing views, the decision of the Cabinet Committee appears to be more satisfactory, at any rate, for the present until some experience is gained in the working of the scheme. This department has previously noted that all information in regard to the issue of orders under security sections should be first placed before the Executive Magistrate and that only where a preliminary order has been passed under section 112 Cr.P.C should these cases be transferred to the Judicial Magistrate for enquiry. The decision of the Cabinet Committee is in agreement with this department's view. In the circumstances stated by the Public(Separation) Department, this department may agree with their views at S above. This procedure is being carried out in—

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in North Arcot and in Chingleput. If it proves a failure or demonstrates the need for the Judicial Magistrates to exercise power concurrently with executive magistrates. The position may be reviewed then.

Sd. x x

2. POWERS OF EXECUTIVE MAGISTRATES TO DIRECT INVESTIGATIO OR ORDER FURTHER ENQUIRY:--

The High Court has stated that the Executive Magistrates should have no power either to direct investigation or order further enquiry. The High Court's view is apparently with reference to M on page 8 of the Memorandum at (N), viz. that Executive Magistrate may also direct the Police to make further enquiry whenever he considers it necessary in a case referred to him and that if such enquiry results in a charge sheet, the Judicial Magistrate try the case as any other case. It is submitted that the Executive Magistrates will be put to much embarrasment without these powers to direct investigation or order further enquiry and cannot function effectively. This department may agree with the Public(Separation) Department's view at M on page 8 ante. that no change is necessary under this head.

Here again the experiment being tried out now might give us an idea of the need or otherwise of adopting the High Court's views.

Sd. x x

3. This department previously noted that the Memorandum contains matters which are already covered by existing Manual or will be provided for in a different places and that the question whether the material might not also appear in this memo. would be noted upon later. While offering their remarks on the Memo. of Instructions, the Hon'ble the Judges have not offered any remarks in this regard. Apparently they have no objection to these portions being included in the Memorandum. Further, these details have been presumably then repeated in the Memo., to make the position clear to the Magistrates in the new set up, many of whom may not be much experienced in the administration of Criminal Justice. In this view, this department need not object to these particulars appearing in the Memorandum also.

No remarks.

Sd.x x

4. APPOINTMENT OF A SEPARATE JAIL OFFICIAL TO BE IN CHARGE OF THE SUB-JAIL.

With reference to the remarks of the High Court in paragraph 2, page 9 c.f., the Public(Separation) department's note under item (iv) on page 9 ante may be perused. In the circumstances stated therein, this department may agree that the suggestion to appoint a separate Jail official (instead of the S.S.M.) to be in charge of Sub-Jail need not be pursued.

5. With ~~reference~~ these remarks, the case may be returned to Pub.(Sepn.)

Sd. x x
15-10-49

Sd. x x
17/x

Sd. x x
17-10-49

Pub(Sepn.)

Home U.O.No.96410-D/49,
dated 17-10-49.

Public(Sepn.) Dept.

Please see the remarks of Revenue and Home with reference to this department notes at pages 7-10 ante. The questions arising for consideration in the light of the remarks of Home and Revenue have been considered separately in the note for the C.C. at its meeting held on 19th October 1949 and the Cabinet Committee took the following decisions among other things with respect to the allocation of powers dealt with in the memorandum of instructions.

II. ALLOCATION OF POWERS BETWEEN THE TWO CATEGORIES OF MAGISTRATES:

--

"In regard to the proceedings under the Security Sections of the Criminal Procedure Code, those under Section 107 should be exclusively under the Executive Magistrate and those under the remaining Sections should be with the Judicial Magistrate as stated in the Memo. of Instructions.

III. MEMORANDUM OF INSTRUCTIONS:-

Paragraph 22(c) of the Memorandum of Instructions listing out courts of District Munsifs with a light file may be deleted and a general clause added to the effect that the system will be extended to such other places as may admit of it.

No other change is called for to the Memorandum of Instructions."

No further action appears to be necessary on this file. The file may be closed and recorded as a G.O. for facility of future reference.

Sd. x x
25-10-49

G.O.Ms.No.3611, dated 25-10-49.

Sub: Separation of Judiciary from the Executive - Memorandum of Instructions regarding allocation of powers - Papers - Recorded.

/True copy/

Office Assistant,
Madras Record Office.

1-9-